

§ 105-163.3. Certain payers must withhold taxes.

(a) Requirement. – Every payer who pays more than one thousand five hundred dollars (\$1,500) during a calendar year to either a nonresident contractor or an ITIN contractor must deduct and withhold from compensation paid to the contractor the State income taxes payable by the contractor on the compensation as provided in this section. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the contractor. The taxes a payer withholds are held in trust for the Secretary.

(b) Exemptions. – The withholding requirement does not apply to the following:

- (1) Compensation that is subject to the withholding requirement of G.S. 105-163.2.
- (2) Compensation paid to an ordained or licensed member of the clergy.
- (3) Compensation paid to an entity exempt from tax under G.S. 105-130.11.
- (4) **(Effective for taxable years beginning on or after January 1, 2015)** Compensation paid to an alien, as described by 8 U.S.C. § 1101(a)(15)(H)(ii)(a), that is not subject to federal income tax withholding under section 1441 of the Code.

(c) **(Repealed effective for taxable years beginning on or after January 1, 2015)** Returns. – A payer must file a return with the Secretary and pay the withheld taxes to the Secretary in accordance with the requirements in G.S. 105-163.6.

(d) **(Effective for taxable years beginning before January 1, 2015)** Annual Statement and Report. – A payer required to deduct and withhold from a contractor's compensation under this section must give the contractor a written statement that sets out the following information and any other information required by the Secretary:

- (1) The payer's name, address, and taxpayer identification number.
- (2) The contractor's name, address, and taxpayer identification number.
- (3) The total amount of compensation paid during the calendar year.
- (4) The total amount deducted and withheld under this section during the calendar year.

This statement is due by January 31 following the end of the calendar year, unless the personal services for which the payer is paying are completed before the end of the calendar year and the contractor requests the statement when the services are completed. In this circumstance, the statement is due within 45 days after the payer's last payment of compensation to the contractor.

Each payer shall file with the Secretary an annual report that compiles the information contained in each of the payer's statements to contractors and any other information required by the Secretary in the manner required by the Secretary. This report is due on the date prescribed by the Secretary and is in lieu of the information report required by G.S. 105-154.

(d) **(Effective for taxable years beginning on or after January 1, 2015)** Returns, Annual Statement, and Report. – A payer required to deduct and withhold from a contractor's compensation under this section must file a return, pay the withheld taxes, and report the amount withheld in the time and manner required under G.S. 105-163.6 and G.S. 105-163.7 as if the compensation were wages.

(e) Records. – This subsection applies to a payer who pays compensation for personal services performed in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program. If a payer does not withhold from payments to a nonresident entity because the entity is exempt from tax under G.S. 105-130.11, the payer must obtain from the entity documentation proving its exemption from tax. If a payer does not withhold from payments to a nonresident corporation or a nonresident limited liability company because the entity has obtained a certificate of authority from the Secretary of State, the payer must obtain from the entity its corporate identification number issued by the

Secretary of State. If a payer does not withhold from payments to an individual because the individual is a resident, the payer must obtain the individual's address and social security number. If a payer does not withhold from a partnership because the partnership has a permanent place of business in this State, the payer must obtain the partnership's address and taxpayer identification number. The payer must retain this information with its records.

(f) Payer May Repay Amounts Withheld Improperly. – A payer may refund to a person any amount the payer withheld improperly from the person under this section, if the refund is made before the end of the calendar year and before the payer furnishes the person the annual statement required by subsection (d) of this section. An amount is withheld improperly if it is withheld from a payment to a person who is not a nonresident contractor or an ITIN contractor, if it is withheld from a payment that is not compensation, or if it is in excess of the amount required to be withheld under this section. A payer who makes a refund under this section must take the following actions:

- (1) Not report the amount refunded on the annual statement required by subsection (d) of this section.
- (2) Either not pay to the Secretary the amount refunded or, if the amount refunded has already been paid to the Secretary, reduce by the amount refunded the next payments to the Secretary of taxes withheld from the person. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; 1989, c. 728, s. 1.42; 1989 (Reg. Sess., 1990), c. 945, s. 8; 1997-109, s. 2; 1998-98, ss. 11-13; 1998-162, s. 3; 2009-476, s. 2; 2013-414, s. 39(a); 2015-259, s. 7.1(e); 2015-263, s. 2(a).)